



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 24, 2017
MAHS Docket No.: 16-013237
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
OVERISSUANCE**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 26, 2017 from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent, with the Office of Inspector General. Respondent did not appear.

ISSUES

The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.

The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Child Development and Care (CDC) benefits.
2. Respondent's CDC need was employment-related participation with an assigned Michigan Works! Agency (MWA).

3. On [REDACTED], MDHHS was aware that Respondent was not participating in employment-related activities with MWA.
4. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in CDC benefits from [REDACTED], through [REDACTED].

CONCLUSIONS OF LAW

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). As of the date of the alleged OI, MDHHS policies were found in the Program Administrative Manual (PAM).

MDHHS requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The document alleged Respondent received an over-issuance of [REDACTED] in CDC benefits from March 18, 2008, through November 22, 2008. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report a change in CDC needs.

A client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2014), p. 1.

MDHHS presented Respondent's handwritten application for cash benefits (Exhibit 1, pp. 8-15). Respondent signed the application on [REDACTED]. Respondent's signature was noted to be certification that she received and reviewed various client responsibilities which are known to include reporting changes in circumstances.

Case notes concerning Respondent's participation with employment-related activities (Exhibit 1, pp. 16-17) were presented. [REDACTED], a Michigan Works! Agency staff person wrote the following:

Medical hold 80 ended on [REDACTED]. Customer did not participate in any educational activities during this referral [sic] period. Customer received support

service for transportation stipend. Terminated – medical determination limit. Notified DHS.

MDHHS presented an IG-001 (Exhibit 1, p. 19). MDHHS testimony indicated the document verifies all earnings by Respondent for employers reporting earnings to the State of Michigan Treasury. Small incomes were listed for Respondent in 2007 and 2009. No income was listed for Respondent in 2008.

MDHHS presented Respondent's CDC benefit issuance history (Exhibit 1, p. 20-22) from [REDACTED], through [REDACTED]. Biweekly issuances of [REDACTED] or [REDACTED] were listed. MDHHS testimony indicated that the payments were in the forms of checks issued to Respondent.

MDHHS testimony indicated Respondent received CDC benefits for her anticipated participation with MWA. MDHHS alleged Respondent never participated with MWA, and therefore, had no basis to receive CDC benefits. MDHHS alleged Respondent had an obligation to report to MDHHS that she did not participate with MWA. The final allegation will be the focus of the analysis.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. PAM 105 (April 2007), p. 7. Changes must be reported within 10 days... *Id.* [Income and] other reporting requirements include... day care needs or providers. *Id.*, pp. 7-8.

In the present case, MDHHS cannot allege a client failure to report not participating with MWA caused an OI of benefits. MDHHS' own evidence verified that MDHHS was either aware, or should have been aware, of Respondent's lack of participation with MWA. The OI was not caused by Respondent's failure to report a change, it was caused by MDHHS' failure to act on the change.

It is found the alleged OI was caused by MDHHS' error. As MDHHS may not establish a CDC benefit OI due to agency error, MDHHS failed to establish an OI occurred. The analysis will proceed to determine if an IPV was established.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges

Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

BAM 720 (January 2016), p. 1; see also 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).


It is recognized that this case presents a possibility that Respondent took advantage of MDHHS' failure to terminate her CDC eligibility by treating herself to thousands of dollars in benefits. Respondent's actions are recognized as highly imperfect.

Though Respondent may have exploited MDHHS' failures, the failures are MDHHS' alone. Without establishment of an OI, an IPV cannot be established. It is found that MDHHS failed to establish a basis for an IPV.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish an OI of \$ [REDACTED] in CDC benefits from [REDACTED], through [REDACTED]. It is further found that MDHHS failed to establish that Respondent committed an IPV related to the alleged OI. The MDHHS requests to establish an OI and/or that Respondent committed an IPV are **DENIED**.

CG/hw



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]